

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN JESTER,	§	
	§	No. 413, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0801038650
Appellee.	§	

Submitted: September 14, 2009

Decided: December 8, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 8th day of December 2009, upon consideration of the appellant's opening brief, the appellee's motion to affirm and the Superior Court record, it appears to the Court that:

(1) The appellant, John Jester, filed this appeal from the Superior Court's June 23, 2009 denial of his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The appellee, State of Delaware, has moved to affirm the Superior Court judgment on the ground that it is

manifest on the face of Jester's opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In March 2008, a grand jury indicted Jester for one count of Rape in the Second Degree. In August 2008, Jester pled guilty to the lesser included offense of Rape in the Fourth Degree. Prior to sentencing, Jester made an oral motion to withdraw his guilty plea, claiming that he was not guilty of the offense. After hearing from Jester, his defense counsel, and the prosecutor, the Superior Court denied the motion and proceeded to sentence Jester to ten years at Level V suspended after three and one-half years for two years of Level III probation.

(3) In January 2009, Jester filed a motion for postconviction relief. Jester alleged that his defense counsel had coerced him into pleading guilty and was otherwise ineffective, the prosecutor had engaged in misconduct, and that the minor victim's accusations against him were coerced by the victim's mother.

(4) The Superior Court referred the postconviction motion to a Commissioner for proposed findings and recommendations. The Commissioner, in turn, directed that Jester's defense counsel file an affidavit

¹ Del. Supr. Ct. R. 25(a).

responding to the allegations of ineffectiveness, and that the State file a response to the motion. Jester then filed a reply.

(5) By report dated April 28, 2009, the Commissioner recommended to the Superior Court that Jester's claims of ineffective assistance of counsel and coerced guilty plea were without merit, and that the claims of victim coercion and prosecutorial misconduct were foreclosed by Jester's voluntary guilty plea. Jester appealed the Commissioner's report and recommendation to the Superior Court.

(6) On appeal to the Superior Court, Jester raised two additional claims: defective indictment and illegal sentence. Following *de novo* review, the Superior Court issued an order that adopted the Commissioner's report and recommendation and denied Jester's motion for postconviction relief. This appeal followed.

(7) In his opening brief on appeal, Jester continues to argue his claims of ineffective assistance of counsel and coerced guilty plea.² Jester also attempts to raise a new claim of insufficient evidence. The Court,

² Jester does not argue his claims of defective indictment, illegal sentence and prosecutorial misconduct in his opening brief. Therefore, those claims are deemed waived and abandoned on appeal. *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997) (citing *Murphy v. State*, 632 A.2d 1150, 1152-53 (Del. 1993)).

however, will not consider Jester's claim of insufficient evidence for the first time on appeal.³

(8) The Court has carefully considered the parties' positions on appeal and the Superior Court record, including defense counsel's affidavit responding to Jester's allegations of ineffective assistance of counsel and coerced guilty plea. It is manifest that the denial of postconviction relief should be affirmed on the basis of the Superior Court's order that adopted the Commissioner's well-reasoned report and recommendation. There is no support in the record for Jester's allegations that his defense counsel coerced him into pleading guilty or was otherwise ineffective. Moreover, we agree with the Superior Court that Jester's voluntary guilty plea foreclosed his other claims of error.⁴

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

³ Del. Supr. Ct. R. 8.

⁴ *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).